

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Minnesota Power's Petition or
Approval of Affiliated Interest Agreements
Governing the Separation of ALLETE, Inc. and
ADESA, Inc.

ISSUE DATE: March 21, 2005

DOCKET NO. E-015/AI-04-1042

ORDER APPROVING THREE AFFILIATED
INTEREST AGREEMENTS AND
DECLINING TO WAIVE GUIDELINE

PROCEDURAL HISTORY

On July 7, 2004, Minnesota Power Company (MP or the Company) filed a petition with the Commission pursuant to the affiliated interest statute (Minn. Stat. § 216B.48) seeking approval of three affiliated interest agreements that govern the separation of ALLETE, Inc. (ALLETE) from its subsidiary ADESA, Inc. (ADESA). Noting that it made its filing 33 days after it executed the agreements, MP also requested a waiver of the Commission's 30-day filing requirement.

On October 15, 2004, the Minnesota Department of Commerce (the Department) filed comments.

The Commission met on February 24, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Minnesota Power's Petition

Minnesota Power (MP) sought approval of three affiliated interest agreements that govern the separation of ALLETE, Inc. from ADESA, Inc.¹ The three agreements include:

¹ MP's filing referred to a fourth agreement related to the separation of ALLETE, Inc. from ADESA, Inc., the Joint Aircraft Ownership & Management Agreement. This fourth agreement was reviewed and approved in a separate proceeding, Docket No. E-015/AI-04-735.

1. Master Separation Agreement, which addresses general arrangements between ADESA and ALLETE for the separation;
2. Tax Sharing Agreement, which addresses various tax issues before and after the separation; and
3. Employee and Director Matters Agreement, which addresses employee benefits and other issues arising from the separation.

MP also requested a waiver of a requirement created in the Commission's Affiliated Interest Order in Docket No. E,G-999/CI-98-651 that affiliated interest agreements be filed within 30 days of the execution of the agreements.² The agreements at issue in this proceeding were signed on June 4, 2004, but the filing was not made until 33 days later (July 7, 2004) with approval requested to be effective for regulatory purposes on June 24, 2004. MP argued that enforcement of the 30-day filing requirement would impose an excessive burden on the Company, that granting the waiver would not conflict with legal standards, and that the public interest would not be adversely affected. MP stated that the intervening Independence Day Holiday created an unfortunate delay in completing the filing within 30 days and suggested that the 3-day delay would not impair the Commission's review.

II. The Department's Comments

The Department first considered whether MP had met the affiliated interest filing requirements established in Docket No. E,G-999/CI-98-651 and Minn. Rules, Part 7825.2200B and found that it had.

Next, the Department analyzed the three affiliated interest agreements to determine whether they were reasonable and in the public interest. Based on its review, the Department stated that the Tax Sharing Agreement was reasonable and recommended that the Commission approve it. Likewise, the Department found that the Employee and Director Matters Agreement, as clarified by additional information provided by the Company, was reasonable and recommended approval. With respect to the Separation Agreement, however, the Department stated that it could only find it reasonable and recommend approval with four conditions or clarifications:

- that MP does not expect to ask for cost recovery for the majority of these spin-off related costs, with the possible exception of 75 percent of the unamortized balance of the \$1.8

² See In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements, Docket No. E, G-999/CI-98-651, ORDER INITIATING REPEAL OF RULE, GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING PROCEDURES (September 14, 1998) at page 10 and Appendix A.

million in debt refinancing costs;

- that in the event MP does ask for recovery of any cost related to the spin-off, MP must fully meet its burden of proof to show the specific benefits to ratepayers;
- that MP must identify spin-off costs in the next rate case; and
- that MP must justify any requested cost recovery related to these spin-off costs in its next rate case.

Regarding MP's variance request, the Department stated that if the Commission deemed a variance required, the Commission should grant the variance for the reasons the Company identified.

III. Commission Analysis and Action

A. Merits of the Affiliated Interest Agreements

The three affiliated interest agreements governing the separation of ALLETE and ADESA come before the Commission for review pursuant to Minn. Stat. § 216B.48, which states in relevant part:

The Commission shall approve the contract or arrangement made or entered into . . . only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.

Thus, the statute provides two tests for the Commission to apply to affiliated-interest contracts: 1) a reasonableness test and 2) a public interest test.

Based on the Department's analysis and recommendation and the Commission's own review, the Commission finds that the Tax Sharing Agreement and Employee and Director Matters Agreement as clarified by additional information provided by the Company are reasonable and in the public interest. The Commission will, therefore, approve them as submitted. Regarding the Separation Agreement, however, the Commission agrees with the Department that it is reasonable and in the public interest only if the four conditions or clarifications identified by the Department are added. With the addition of those conditions or clarifications, the Commission will also approve the Separation Agreement.

B. Request for Waiver

In an Order issued September 14, 1998 in Docket No. E, G-999/CI-98-651, the Commission reviewed procedures for affiliated interest filings that had been developed by a group of utilities,

including MP.³ The Commission found that the parties' proposals, as modified to the satisfaction of the Department, were reasonable and endorsed them.⁴ The Commission stated that the procedures represented a reasonable distillation of the requirements of Minn. Stat. § 216B.48 and the Commission's affiliated interest rules and provided a helpful blueprint for complying with them.⁵ The Commission stated that it would use relevant portions as "appropriate internal operating procedures" for processing affiliated interest filings.⁶

Among the parties' proposed procedures, the utilities agreed on a time frame for filing affiliated interest agreements for Commission approval. The parties proposed that such a filing was to be made within 30 days of executing a contract or arrangement with an affiliate.

MP asked the Commission to waive the 30-day filing provision in this case. Such a waiver would, in effect, excuse the Company's failure to file the ALLETE/ADESA affiliated interest agreements consistent with the 30-day filing provision. In support of its request, the Company analogized its request to a request for a rule variance and discussed the three criteria that are relevant to granting a variance under Minn. Rules, Part 7825.3200.

The Commission does not find that violating the 30-day filing time frame (internal guideline) endorsed in the Commission's September 14, 1998 Order is analogous to violating a Commission rule. Moreover, given the nature of the guideline in question and the circumstances of this case, the Commission finds no basis for waiving it.

ORDER

1. The Commission hereby Commission approves the three agreements (the master separation agreement, the tax sharing agreement, and the employee and director agreement) under the affiliated interest statute, with the following conditions and clarifications to the master separation agreement:
 - MP does not expect to ask for cost recovery for the majority of these spin-off related costs, with the possible exception of 75 percent of the unamortized balance of the \$1.8 million in debt refinancing costs;
 - in the event MP does ask for recovery of any cost related to the spin-off, MP must fully meet its burden of proof to show the specific benefits to ratepayers;
 - MP must identify spin-off costs in the next rate case; and

³ Supra at pages 8-9.

⁴ Supra at page 9.

⁵ Supra at page 9.

⁶ Supra at page 9.

- MP must justify any requested cost recovery related to these spin-off costs in its next rate case.
2. The Commission declines to waive the 30-day filing portion of the procedures for affiliated interest filings that the Commission endorsed in its September 14, 1998 Order in Docket No. E,G-99/CI-98-651.
 3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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